

# **EXHIBIT D**



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June 17, 2018

**Via Electronic Mail and First Class Mail**

Shawn E. Shearer, Esq.  
The Law Office of Shawn Shearer, P.C.  
3839 McKinney Avenue, Suite 155-254  
Dallas, Texas 75204

**Re: *Steven B. Barger v. First Data Corporation et al.*  
Civil Case No. 1:17-cv-4869  
Deposition Scheduling**

Dear Mr. Shearer:

This letter will confirm and/or address your email and accompanying response dated June 15, 2018 which followed the conference call with Judge Bloom.

1. **Depositions of E.J. Jackson and Adam Rosman.** Unless otherwise ordered by the Court, Defendants will not produce either E.J. Jackson (a First Data employee having nothing to do with this case) for a deposition on July 3, 2018 when you will be in Palo Alto or Adam Rosman (the General Counsel of First Data Corporation) for a deposition in New York on June 22, 2018 to testify about the Thrive program. We previously advised on May 21, May 29, and June 8, 2018 that we will not produce Mr. Jackson for a deposition. We also advised on June 8, 2018 that we would not produce Mr. Rosman for deposition once you noticed him. We also reminded you during our call with Judge Bloom on June 12, 2018 that we objected to your request to depose Mr. Jackson and Mr. Rosman. Nonetheless, they continue to appear in your correspondence. To be clear, you should not travel to any location on either June 22 or July 3 expecting to depose either of these First Data employees. Should you move to compel any of these depositions, we will object for the reasons previously provided.

If you need information about Mr. Jackson's hire, you will have the ability to question Defendant Dan Charron about that topic, especially since you produced articles quoting Mr. Charron about Mr. Jackson's hiring. With respect for your desire to obtain information about Thrive, you are certainly permitted under the rules to serve interrogatories to obtain relevant information about this ERG program.

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2. **Depositions in Omaha, Nebraska.** We are confirming the depositions of **Amy Steffen on Thursday, July 5, 2018 from 9 AM – 11:30 AM and Jennifer Voycheske from noon – 5 PM in Omaha.** (As you may have noticed, the witness availability chart had the correct day of the week listed, but the wrong date. With July 4, 2018, being a federal holiday, of course the correct date is July 5, 2018.) Please advise as to the locations of those depositions in Omaha.

3. **Limits on the number of depositions under Rule 30.** To date, you have deposed: (1) **Robin Ording**; (2) **Defendant Karen Whalen**; (3) **Josh King**; and (4) **Defendant Tony Marino** and the following depositions are currently scheduled: (5) **Matt Cagwin**; (6) **Defendant Dan Charron**; (7) **Defendant Rhonda Johnson**; (8) **Defendant Frank Bisignano**; and (9) **Joe Plumeri**. With the depositions of **Ms. Steffen and Ms. Voycheske in Omaha on Thursday, July 5, 2018<sup>1</sup>** you will have taken and/or noticed more than 10 depositions, which is more than permitted by Rule 30 of the Federal Rules of Civil Procedure as specifically referenced by Judge Bloom during our call on Tuesday, June 12, 2018 when we raised our objections to the depositions of Mr. Rosman and Mr. Jackson. You have also advised that you want to take the deposition of **Oliver St. George to testify to your social media concerns on July 13, 2018 from 9 AM – 11 AM.** That puts you at 12 [13 possible with Pulverenti if you select a different date] depositions in this case. Those are all of the depositions to which we are willing to agree. If you think you are entitled to extra depositions beyond the scope of the Rules, you will have to seek permission from Judge Bloom pursuant to Fed.R. Civ. P. 30(a)(2).

4. **Admissibility of Documents.** In your email, you take issue with respect to the admissibility of certain documents at trial. You certainly have the right to advise Judge Block during our pretrial conference that you are not willing to stipulate to the authenticity of the documents.

5. **Medical testimony.** In your June 15, 2018 letter and response, you mention something about a protective order regarding Mr. Barger's medical history in connection with the depositions of the medical personnel from Emory Hospital set for June 25, 2018 in Atlanta. We are not sure why you included this comment in your letter. After all, this is an FMLA and ADA lawsuit in which your client put his medical information at issue. Moreover, Mr. Barger

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<sup>1</sup> You decided to select July 5 for the depositions in Omaha when only Amy Steffen and Jennifer Voycheske are available. You then list the morning of July 16 for a 3 hour deposition of Stephanie Pulverenti. While we are willing to produce both Ms. Steffen and Ms. Voycheske even though that takes you over the 10 deposition limit, it is an unreasonable burden and expense to require another trip to Omaha to take Ms. Pulverenti's deposition for 3 hours and we have no doubt that Judge Bloom will agree with our position. We therefore object to the scheduling of her deposition on July 16. If you want to pick a date or consecutive dates when Steffen, Voycheske and Pulverenti are all available, we would agree to produce all 3 even though this would then put the number of depositions at 13 total because of our good faith representations early on in this case that we would produce them together.

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already executed a release authorizing the release of his medical records per Judge Bloom's instructions.

Thank you for your attention to this matter. Please advise as to the deposition locations in Omaha for Ms. Steffen and Ms. Voycheske on July 5 and for Mr. St. George in New York City on July 13.

Very truly yours,

A handwritten signature in blue ink that reads "Gary B. Eidelman". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

Gary B. Eidelman

cc: Counsel of Record